

Maine Revised Statutes
Title 10: COMMERCE AND TRADE
Chapter 206-B: PERSONAL SPORTS MOBILE
MANUFACTURERS, DISTRIBUTORS AND DEALERS

§1243. PROHIBITED ACTS

The following acts are unfair methods of competition and unfair and deceptive practices. It is unlawful for any: [1997, c. 473, §3 (NEW).]

1. Damage to public. Manufacturer or personal sports mobile dealer to engage in any action that is arbitrary, in bad faith or unconscionable and that causes damage to any of the parties or to the public;

[1997, c. 473, §3 (NEW) .]

2. Coercion involving deliveries and orders. Manufacturer or an officer, agent or other representative of a manufacturer to coerce or attempt to coerce any personal sports mobile dealer:

A. To order or accept delivery of any personal sports mobile or appliances, equipment, parts or accessories for a personal sports mobile or any other commodity or commodities that the personal sports mobile dealer has not voluntarily ordered, or to order or accept delivery of any personal sports mobile with special features, appliances, accessories or equipment not included in the list price of the personal sports mobile as publicly advertised by the manufacturer; or [1997, c. 473, §3 (NEW).]

B. To order for any person any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever; [1997, c. 473, §3 (NEW).]

[1997, c. 473, §3 (NEW) .]

3. Certain interference in dealer's business. Manufacturer or an officer, agent or other representative of a manufacturer:

A. To refuse to deliver in reasonable quantities and within a reasonable time after receipt of a dealer's order to any personal sports mobile dealer having a franchise or contractual arrangement for the retail sale of new personal sports mobiles sold or distributed by a manufacturer any personal sports mobiles that are covered by that franchise or contract and specifically publicly advertised by that manufacturer to be available for immediate delivery; however, the failure to deliver any personal sports mobile is not a violation of this chapter if that failure is due to an act of God, or work stoppage or delay due to a strike or labor difficulty, shortage of materials, freight embargo or other cause over which the manufacturer or any of its agents has no control; [1997, c. 473, §3 (NEW).]

B. To coerce or attempt to coerce any personal sports mobile dealer to enter into any agreement with a manufacturer or an officer, agent or other representative of a manufacturer, or to do any other act prejudicial to that dealer by threatening to cancel any franchise or any contractual agreement existing between the manufacturer and that dealer; however, notice in good faith to any personal sports mobile dealer of that dealer's violation of any terms or provisions of the franchise or contractual agreement, or any good faith attempt by the manufacturer to enforce the terms or provisions of the franchise or contractual agreement, does not constitute a violation of this chapter; [1997, c. 717, §1 (AMD) .]

C. To resort to or use any false or misleading advertisement in connection with the manufacturer's business as a manufacturer or an officer, agent or other representative of the manufacturer; or to force any dealer to participate in any advertising campaign or contest, or to purchase any promotional materials, display devices or display decorations or materials at the expense of the new personal sports mobile dealer; [1997, c. 473, §3 (NEW).]

D. To offer to sell or to sell any new personal sports mobile at a lower price than the price offered to any other personal sports mobile dealer for the same model vehicle similarly equipped, or to utilize any device, including, but not limited to, sales promotion plans or programs that result in that lower price. This paragraph does not apply to the following:

- (1) Sales to a personal sports mobile dealer for resale to any unit of the Federal Government;
- (2) Any manufacturer or any of its agents offering to sell or selling new personal sports mobiles to all personal sports mobile dealers at an equal price; and
- (3) Sales by a manufacturer or any of its agents to any unit of the Federal Government; [1997, c. 473, §3 (NEW).]

E. To offer to sell or lease or to sell or lease any new personal sports mobile to any person, except a manufacturer, at a lower price than the price offered and charged to a personal sports mobile dealer for the same model vehicle similarly equipped or to utilize any device that results in that lower price; [1997, c. 473, §3 (NEW).]

F. To offer to sell or to sell parts or accessories to any new personal sports mobile dealer for use in that dealer's own business for the purpose of replacing or repairing the same or a comparable part or accessory at a lower price than the price charged for that part or accessory to any other new personal sports mobile dealer for similar parts or accessories for use in the dealer's own business; [1997, c. 473, §3 (NEW).]

G. To prevent or attempt to prevent by contract or otherwise any personal sports mobile dealer from changing the capital structure of that dealer's dealership or the means by or through which the dealer finances the operation of that dealership, if the dealer at all times meets any reasonable capital standards agreed to between the dealership and the manufacturer and if that change by the dealer does not result in a change in the executive management control of the dealership; [1997, c. 473, §3 (NEW).]

H. To prevent or attempt to prevent by contract or otherwise any personal sports mobile dealer or any officer, partner or stockholder of any personal sports mobile dealer from selling or transferring any part of the interest of any of them to any other person or party. However, a dealer, officer, partner or stockholder may not sell, transfer or assign the franchise or power of management or control under the franchise without the consent of the manufacturer. That consent may not be unreasonably withheld; [1997, c. 473, §3 (NEW).]

I. To obtain money, goods, services, anything of value or any other benefit from any other person with whom the personal sports mobile dealer does business, on account of or in relation to the transactions between the dealer and the other person, unless that benefit is promptly accounted for and transmitted to the personal sports mobile dealer; [1997, c. 473, §3 (NEW).]

J. To compete with a personal sports mobile dealer operating under an agreement or franchise from a manufacturer in a relevant market area that has been determined exclusively by equitable principles. A manufacturer is not considered to be competing when operating a dealership either temporarily for a reasonable period not to exceed one year or in a bona fide relationship in which an independent person has made a significant investment subject to loss in the dealership and can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; [1997, c. 473, §3 (NEW).]

K. To require a personal sports mobile dealer to assent to a release assignment, novation, waiver or estoppel that would relieve any person from liability imposed by this chapter; [1997, c. 473, §3 (NEW).]

L. To require any new personal sports mobile dealer to refrain from participation in the management or acquisition of or investment in any other line of new personal sports mobiles or related products; [1997, c. 473, §3 (NEW).]

M. To require any new personal sports mobile dealer to change the location of the new personal sports mobile dealership or during the course of the agreement or franchise to make any substantial alterations to the dealership premises when to do so would be unreasonable; [1997, c. 473, §3 (NEW).]

N. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, unless a manufacturer has:

- (1) Satisfied the notice requirement of paragraph Q;
- (2) Acted in good faith as defined in section 1242, subsection 11; and
- (3) Good cause for the cancellation, termination, nonrenewal or noncontinuance; [1997, c. 473, §3 (NEW).]

O. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, unless good cause exists. Good cause exists for the purposes of a termination, cancellation, nonrenewal or noncontinuance:

- (1) When there is a failure by the new personal sports mobile dealer to comply with a provision of the franchise that is both reasonable and of material significance to the franchise relationship so long as compliance on the part of the new personal sports mobile dealer is reasonably possible and the manufacturer first acquired actual or constructive knowledge of the failure not more than 180 days prior to the date on which notification is given pursuant to paragraph Q;
- (2) If the failure by the new personal sports mobile dealer, as described in subparagraph (1), relates to the performance of the new personal sports mobile dealer in sales or service. In this case, good cause is the failure of the new personal sports mobile dealer to effectively carry out the performance provisions of the franchise if:
 - (a) The new personal sports mobile dealer was apprised by the manufacturer in writing of that failure; the notification stated that notice was provided of failure of performance pursuant to this subsection; and the new personal sports mobile dealer was afforded a reasonable opportunity for a period of not less than 4 months to exert good faith efforts to carry out the performance provisions;
 - (b) The failure continued within the period that began not more than 120 days before the date notification of termination, cancellation or nonrenewal was given pursuant to paragraph Q; and
 - (c) The new personal sports mobile dealer has not substantially complied with reasonable performance criteria established by the manufacturer and communicated to that dealer;
- (3) When the dealer and the manufacturer agree not to renew the franchise; or
- (4) When the manufacturer discontinues production or distribution of any parts, accessories, equipment, machinery, tools, appliances or any commodity whatsoever; [1997, c. 717, §2 (AMD).]

P. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, based on any of the following items, which do not constitute good cause:

- (1) The change of ownership of the new personal sports mobile dealer's dealership. This subparagraph does not authorize any change in ownership that would have the effect of the sale of the dealership without the manufacturer's written consent. This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer;
- (2) The fact that the new personal sports mobile dealer unreasonably refused to purchase or accept delivery of any new personal sports mobile, parts, accessories or any other commodity or services not ordered by the new personal sports mobile dealer, except that the manufacturer may require that the dealer stock a reasonable supply of parts or accessories required to perform campaign, recall or warranty work, and except that this provision is not intended to modify or supersede any requirement of the franchise that dealers market a representative line of those personal sports mobiles that the manufacturer is publicly advertising;

(3) The fact that the new personal sports mobile dealer owns, has an investment in, participates in the management of or holds a license for the sale of another make or line of new personal sports mobiles or that the new personal sports mobile dealer has another make or line of new personal sports mobiles in the same dealership facilities as those of the manufacturer, as long as the new personal sports mobile dealer maintains a reasonable line of credit for each make or line of new personal sports mobiles and that the new personal sports mobile dealer remains in substantial compliance with reasonable facilities' requirements of the manufacturer; or

(4) The fact that the new personal sports mobile dealer sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new personal sports mobile dealer's designated family member. The manufacturer shall give effect to such change in the ownership in the franchise. This subparagraph does not authorize any changes in ownership that would have the effect of the sale of the dealership without the manufacturer's written consent. This consent may not be unreasonably withheld. The burden of establishing the reasonableness is on the manufacturer.

The manufacturer has the burden of proof under paragraph N for showing that it has acted in good faith, that the notice requirements have been complied with and that there was good cause for the franchise termination, cancellation, nonrenewal or noncontinuance; [1997, c. 473, §3 (NEW).]

Q. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer, notwithstanding the terms, provisions or conditions of any agreement or franchise or the terms or provisions of any waiver, without first providing notification of the termination, cancellation, nonrenewal or noncontinuance to the new personal sports mobile dealer as follows:

(1) Notification under this paragraph must be in writing and must be delivered personally or by certified mail to the new personal sports mobile dealer and must contain:

- (a) A statement of intention to terminate, cancel, not continue or not renew the franchise;
- (b) A statement of the reasons for the termination, cancellation, noncontinuance or nonrenewal; and
- (c) The date on which the termination, cancellation, noncontinuance or nonrenewal takes effect;

(2) The notice required in this paragraph may not be given less than 90 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal, except as provided in subparagraph (3); or

(3) The notice required in this paragraph may not be given less than 15 days prior to the effective date of the termination, cancellation, noncontinuance or nonrenewal with respect to any of the following:

- (a) Insolvency of the new personal sports mobile dealer or filing of any petition by or against the new personal sports mobile dealer under any bankruptcy or receivership law;
- (b) The business operations of the personal sports mobile dealer have been abandoned or closed for 14 consecutive business days unless the closing is due to an act of God, strike or labor difficulty; or
- (c) Conviction of or plea of nolo contendere of a personal sports mobile dealer or one of its principal owners of any Class A, Class B or Class C crime, as defined in Title 17-A, in which a sentence of imprisonment of one year or more is imposed under Title 17-A, sections 1251 and 1252; or [1997, c. 473, §3 (NEW).]

R. To cancel, terminate, fail to renew or refuse to continue any franchise relationship with a licensed new personal sports mobile dealer without providing fair and reasonable compensation to the licensed new personal sports mobile dealer for:

- (1) All unsold new model personal sports mobile inventory of the current and previous 2 model years purchased from the manufacturer;

(2) Unused supplies and parts purchased from the manufacturer or its approved sources; however, if the termination, cancellation, nonrenewal or noncontinuance was for good cause, the following conditions apply:

- (a) The rate of reimbursement is the dealer net price at the time of reimbursement, less a 15% restocking fee;
- (b) Each part to be repurchased must be new, undamaged, in its original packaging, if applicable, currently listed in the distributor's parts list and directly purchased by the dealer seeking repurchase from the distributor;
- (c) The dealer must comply with reasonable procedures established by the distributor for parts repurchased, as long as these procedures do not reduce the price and are necessary for the orderly return of parts; and
- (d) The dealer must possess, and transfer to the distributor, right title to the parts;

(3) Equipment and furnishings purchased from the manufacturer or its approved sources;

(4) Special tools purchased from the manufacturer or its approved sources; and

(5) Facilities, if the involuntary termination, cancellation, noncontinuance or nonrenewal is due to a failure of performance of the new personal sports mobile dealer in sales or service. The amount of compensation due to the dealer from the manufacturer must be determined as follows:

- (a) If the new personal sports mobile dealer is leasing the facilities from a lessor other than the manufacturer, the manufacturer shall pay the new personal sports mobile dealer a sum equivalent to the pro rata portion of the rent for the unexpired term or one year's rent, whichever is less, that represents the aggregate percentage of the sales dollar volume and service dollar volume derived from the sale and service of that manufacturer's products for the 12 months immediately preceding termination, cancellation, noncontinuance or nonrenewal; or
- (b) If the new personal sports mobile dealer owns the facilities, the manufacturer shall pay the new personal sports mobile dealer a sum equivalent to the pro rata portion of the reasonable rental value of the facilities for one year that represents the aggregate percentage of the sales dollar volume and service dollar volume derived from the sale and service of that manufacturer's products for the 12 months immediately preceding the termination, cancellation, noncontinuance or nonrenewal.

Such fair and reasonable compensation for the items listed in subparagraphs (1), (3) and (4) may not be less than the acquisition price. Compensation for the items listed in subparagraphs (1), (3), (4) and (5) must be paid by the manufacturer, when possible, within 90 days of the effective date of the termination, cancellation, noncontinuance or nonrenewal. Compensation for the items listed in subparagraph (2) must be paid by the manufacturer, when possible, within 90 days of the date on which the parts are received by the manufacturer from the dealer.

In lieu of any injunctive relief or any other damages, if the manufacturer fails to prove there was good cause for the termination, cancellation, noncontinuance or nonrenewal, or if the manufacturer fails to prove that it acted in good faith, then the manufacturer may pay the new personal sports mobile dealer fair and reasonable compensation for the value of the dealership as an ongoing business; and [1997, c. 717, §3 (AMD) .]

[1997, c. 717, §§1-3 (AMD) .]

4. Dealer violations. Personal sports mobile dealer:

A. To require a purchaser of a new personal sports mobile, as a condition of sale and delivery of the new personal sports mobile, to also purchase special features, appliances, equipment, parts or accessories not desired or requested by the purchaser. The substance of this paragraph must be conveyed by the personal sports mobile dealer to the purchaser prior to the consummation of the purchase; [1997, c. 473, §3 (NEW) .]

B. To represent and sell as a new personal sports mobile any personal sports mobile that has been used and operated for demonstration purposes or is otherwise a used personal sports mobile; [1997, c. 473, §3 (NEW).]

C. To resort to or use any false or misleading advertisement in connection with that dealer's business as a personal sports mobile dealer; [2001, c. 616, §2 (AMD).]

D. To fail to disclose conspicuously in writing the personal sports mobile dealer's policy in relation to the return of deposits received from any person. A dealer shall require that a person making a deposit sign the form on which the disclosure appears; or [2001, c. 616, §2 (AMD).]

E. To sell, directly or indirectly, a new personal sports mobile without holding a current and valid franchise with the manufacturer of the brand of new personal sports mobile being sold. [2001, c. 616, §3 (NEW).]

[2001, c. 616, §§2, 3 (AMD).]

SECTION HISTORY

1997, c. 473, §3 (NEW). 1997, c. 717, §§1-3 (AMD). 2001, c. 616, §§2,3 (AMD).

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